

OCT 24 2006

**EMPLOYER STATUS DETERMINATION**  
**Hainesport Industrial Railroad, LLC**

This is the determination of the Railroad Retirement Board concerning the status of Hainesport Industrial Railroad, LLC (HIR) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding HIR was provided by Linda J. Morgan, counsel for HIR. According to Ms. Morgan, HIR began doing business November 1, 2005. HIR reportedly has three employees, who were first compensated on that date.

In Surface Transportation Board Finance Docket No. 34695, HIR filed a notice of exemption to lease and operate approximately 1 mile of rail line owned by Hainesport Industrial Park Railroad Association. The line is located within the Hainesport Industrial Park, and connects with Consolidated Rail Corporation. According to Ms. Morgan, HIR will serve approximately five to seven customers, and annual volume is expected to be 800 to 1,000 cars. Mr. Morgan explained that 50% of HIR's volume will be with Norfolk Southern Railroad (NS) and 50% will be with CSXT. Revenues will be equally divided as well, with 50% received from NS and 50% received from CSXT. Ms. Morgan described the service HIR provides as "receipt at interchange with road haul and delivery to customers". HIR is owned by Mr. David R. Caplan, and has no subsidiaries or other affiliates.

Section 1(a) (1) of the Railroad Retirement Act (45 U.S.C. § 231(a) (1)), insofar as relevant here, defines a covered employer as:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The definition section of Part A of Subtitle IV of Title 49 of the United States Code defines "railroad" to include a switch, spur, track, terminal, or terminal facility as well as a freight depot, yard, and ground used or necessary for transportation (49 U.S.C. § 10102(6)(C)). It is well settled that a terminal or switching company is a common carrier rather than a private carrier if it holds itself out to be one, acts in that capacity, and is dealt with in that capacity by railroads in general. U.S. v.

California, 297 U.S. 175 (1936). The portion of Title 49 that is cited in the definition of "employer" in the Railroad Retirement Act gives to the Surface Transportation Board jurisdiction over railroad transportation in the United States between a place in "a State and a place in the same or another State as part of the interstate rail network" (49 U.S.C. § 10501(a)(2)(A)). Consistent with the foregoing, the Board has held switching railroads to be covered employers under the Railroad Retirement and Railroad Unemployment Insurance Acts where they act in the capacity of a common carrier subject to the jurisdiction of the Surface Transportation Board.

Although HIR conducts its operations within Hainesport Industrial Park, it performs those operations as a liaison between NS and CSXT and shippers and receivers, holding itself out to the public as engaging in the business of transporting freight to and from the NS and CSXT. The Board therefore finds that HIR became a rail carrier employer within the definition set out in section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective November 1, 2005, the date as of which it commenced operations.

Original signed by:

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